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No. 458.

In the Supreme Court of the United States

OCTOBER TERM, 1968

LEAH JOYCE TELLER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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LEAH JOYCE TELLER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of The Supreme Court of the United States:

The Petitioner, Leah Joyce Teller, prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURTS BELOW

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, No. 66 CR 480 was entered on November 22, 1966, and is not reported but appears in the record filed with, and certified by the Clerk of the Court of Appeals for the Seventh Circuit to this Court.

The opinion of the United States Court of Appeals for the Seventh Circuit affirming said judgment, was filed on June 25, 1968, and is not yet reported, but is set forth in the appendix hereto and in the certified copy of the record as No. 16065 of that date.

JURISDICTION

The date of the judgment to be reviewed is June 25, 1968. A Petition for Rehearing was denied on August 5, 1968. This Petition is filed within 30 days of that order. The jurisdiction of this court is invoked under Title 28, U.S.C., Section 1254(1).

QUESTIONS PRESENTED FOR REVIEW

When, in the course of the execution of a search warrant for her residence, a woman, who is not even suspected of any unlawful activity, enters the home and sets down her purse, is that purse subject to search under the authority of the warrant?

When both the prosecutor and the trial judge concur that petitioner had dominion and control over her purse and that the purse was her private property, was not that purse protected against intrusion under the Fourth Amendment?

CONSTITUTIONAL PROVISION

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

This cause commenced on July 26, 1966, by filing of an indictment charging the purchase, sale, dispensing and distributing of 4.200 grams of heroin on July 23, 1966 in violation of Title 26, U.S.C. 4704(a) in the First Count; with the receipt, concealment and facilitation of the same narcotics in the Second Count in violation of Title 21, U.S.C., Section 174; and of 1.320 grams of cocaine in Count Three (C.L. 4-6).*

On September 19, 1966, a motion was made to suppress evidence and to return property on the ground that the search and seizure were unreasonable, not authorized by a warrant or search warrant, and that the property was not subject to search and seizure, all in violation of the Fourth Amendment to the Constitution (C.L. 17). The property was described as a purse and alleged narcotics. On September 20, 1966, an answer to the motion was filed alleging the existence on July 23, 1966 of a search warrant for the premises at 9736 South Longwood Drive, Beverly Hills, Chicago, Illinois and an arrest warrant for the person of Sheldon R. Teller, the husband of the petitioner,

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* "C.L. ....." refers to the Common Law Record. "R....." refers to the Transcript of Proceedings.

and that the purse and its contents were seized on the premises, and that, therefore, the search and seizure were valid. (C.L. 22-24)

A hearing was had on the motion and answer thereto (R. Sept. 22, 1966) and the motion was denied. (C.L. 27)

Trial on the case was had on September 26 and 27 to the Court, a jury having been waived (C.L. 28), and a finding of guilty as charged entered (C.L. 33).

On October 3, 1966, this petitioner filed a motion for judgment of acquittal or new trial (C.L. 34), which motion for new trial was granted as to Counts 2 and 3, and denied as to Count One on which a sentence of five years was imposed on November 22, 1966. Thereupon, Counts Two and Three were ordered dismissed on motion of the government. (C.L. 38)

On the Appeal to the United States Court of Appeals for the Seventh Circuit, your petitioner complained, inter alia, of the failure to suppress and exclude evidence found in her purse, which she was carrying when she entered the premises during the execution of the search warrant and which she set down on the bed in her bedroom, claiming that the search of such purse constituted an unauthorized search of her person, or an unauthorized search and seizure of her personal effects.

STATEMENT OF FACTS

On July 23, 1966, a warrant was issued for the arrest of one Sheldon R. Teller, and a search warrant issued for his dwelling and garage at 9736 South Longwood Drive, Beverly Hills, Chicago, Illinois, which warrant read as follows:

> "The undersigned being duly sworn deposes and says:
>
> "That he has reason to believe that on the premises known as dwelling and garage at 9736 S. Longwood Dr. Beverly Hills, Chicago, Ill. in the No. District of Ill. there is now being concealed certain property, namely money which is the fruit of a crime to wit, a violation of Title 21, Sec. 174. U.S. Code.
>
> "And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: Information from Samuel Washington, that he paid Sheldon R. Teller, occupant of said premises, $3,000 for narcotic drugs July 21, 1966. Carl L. Jackson, nar. agt., informed complainant he saw the delivery of the narcotics. Complainant furnished Washington with the money. According to Agts. Rendina and Hughes they observed said Teller in possession of narcotic paraphernalia on May 4, 1966." (Exhibit I)[1]

The petitioner herein is the wife of Sheldon Teller, and a resident of those premises. The premises were en-

---

[1] Sheldon Teller was tried after this petitioner, and in that trial attack was made on the sufficiency of the affidavit. The failure to grant the Motion to Suppress is claimed as error on his appeal, now pending in the Seventh Circuit. It also developed on his trial that the information given by Narcotics Agent Jackson had its source in eavesdropping on an extension and via an electronic listening device attached to the person of the informer Washington.

tered by virtue of the warrant that issued on the basis of the affidavit above, and the search was made pursuant to that warrant. (R. 84, 85, 103)

When the agents of the Bureau of Narcotics accompanied by officers of the Chicago Police Department went to that address to execute the warrant (and also to execute the arrest warrant on Sheldon Teller) they first saw the petitioner behind the driver's seat of her Cadillac parked in the driveway of the house. (R. 151)

Mrs. Teller was with her children, preparatory to going on a shopping trip. The agents' car pulled into the same driveway thereby blocking her exit. (R. 7, 113, 114, 139)

The agents and the accompanying policemen (four of them) walked over to Mr. Teller, who was standing on the front lawn conversing with the occupants of the car prior to their driving away, and placed him under arrest. They put handcuffs on him and he asked that he not be observed by his neighbors handcuffed. They started toward the house, and he told them they would not be permitted to enter unless they had a search warrant. They thereupon produced a search warrant. This petitioner followed them into the house with her children.

At the time of the search the petitioner was the only woman on the premises. (R. 44-45, 113) Agent Pringle, together with another agent and a police officer, upon entering the home went immediately to the main bedroom. At the time Pringle went up to the bedroom he took Mr. Teller with him, and began to search. Mrs. Teller was then in the living room with one of the children. (R. 26-30)

Later petitioner went up to the bedroom and kissed her husband. She placed her purse on the bed, where it remained untouched for a period of about twenty minutes,

during which time she was in and out of the bedroom three times. (R. 78) After the twenty minutes Agent Pringle picked the purse up. (R. 26-35) He opened it and found several compartments inside with various feminine articles. In a side compartment, he found a small plastic vial containing a quantity of white powder and a piece of lined tablet paper creased down the center. He removed the white cap from the top of the vial, removed a small portion of the white powder, and conducted a marquis reagent field test on a portion of the powder, getting a positive result indicating the presence of an opium derivative. In a center compartment of the purse he found another plastic vial containing a quantity of white crystalline powder in a paper creased down the center, the paper was similar to the one he found in the first compartment. He also found $530.00 in United States Currency, two small address books, one of which contained two receipts made out to Leah Joyce Teller, 9736 South Longwood Drive, Chicago, Illinois, from Sy Devore Haberdashers and Clothiers of Sherman Oaks, California. There were also a set of car keys and household keys, a pair of women's silk hose, cosmetics, combs, and certain articles that would "normally" be found in a woman's purse. He thereupon arrested Mrs. Teller for violation of the federal narcotics laws, and warned her about her right to counsel and that any statements she made could be used against her in a court of law. Pringle asked her if the purse belonged to her and she said that it did. He asked her if the $530.00 belonged to her and she replied in the affirmative and that her husband Sheldon had given it to her to go shopping. He then asked her if the two plastic vials containing the white powder belonged to her, and she said that her husband told her not to answer any questions, that her husband would get their attorney. No inventory

was made of the money, though the numbers on the bills were checked. The purse was confiscated and the $530.00 was returned to Mrs. Teller.[2]

On the Motion to Suppress, it was the position of the petitioner that the search herein constituted an unauthorized search of her person, or at the least, an unauthorized search and seizure of her personal effects:

The contention of the government, while admitting there was no warrant for the arrest of petitioner, contended there was an arrest warrant for the person of her husband, Sheldon R. Teller, and that there was a search warrant for the house, and that the material which was in the purse and possession of the petitioner was subject to search and seizure under the search warrant. (R. 54-55, proceedings September 22, 1966)

In the Court of Appeals, the petitioner argued that common experience requires recognition of the supreme privacy a woman attaches to her purse; that it is, in fact, an extension of her person; and the necessity that it must, by its nature, be put down from time to time, does not affect its personal nature.

The Court of Appeals rejected the argument holding:

> "The fallacy of this argument is that, while it recognizes that the use of a practical means of carrying articles with her is employed when a woman carries a purse, which is undoubtedly selected to harmonize with her costume and personal appearance generally, those incidental effects result only when she is *carrying* a purse in harmony with the color context of her clothing

[2] All other moneys found in the house were seized. Among the $45,471.00 taken, $2700 was identified as "advance funds" given the "special employee" Washington by the Narcotics Bureau.

and general appearance, *i.e.* when she is 'wearing' a purse. The same reasoning would apply to any of her garments. On the other hand, it is obvious that, when defendant placed the purse upon the bed and left the room, she was not continuing to 'wear' it as an 'extension of her person'. For the time being at least the purse was then no more a part of her person than would have been a dress which she had worn into the room and then removed for deposit in a clothes closet. We conclude that it would be contrary to the facts to hold that a search of a purse lying upon a bed, where it was placed by its owner, constitutes a search of the *person* of that owner, who had placed it there and then left the room.

* * *

"Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant which the federal agents held and were enforcing. See *Walker* v. *United States,* D.C. Cir., 327 F.2d 597 (1963), cert. denied 377 U.S. 956." (A. 4-5)

The petitioner argued, as an alternative, that if a purse were not considered an extension of her person, it was certainly one of her "effects" protected by the Fourth Amendment.

This argument was certainly in accord with the theory of the prosecution and the express findings of the Trial Court:

"The Court: Let me ask you a question, Mr. Connelly [prosecutor]: As a matter of law, not that it is relevant to this case particularly, though it occurred to me as I thought about this case, are husband and wife both in possession of everything that is in the house?

"Mr. Connelly: No, sir.

"The Court: They are not?

"Mr. Connelly: No, sir.

"The Court: How do you determine who is in possession of something that is in a house? The furniture in my house, for example, aren't my wife and I both in possession of that?

"Mr. Connelly: Yes, I would think — "

* * *

"The Court: I wasn't asking the specific question here except as it would have relevance to this, but I was just curious as to the general proposition in law with respect to the possession. As I understand the definition, it is that you have dominion or control. Whether you have it in your hand or not isn't material. It is whether you have the authority or power to do something with it, to move it, to sell it, to give it away, or what have you.

"Mr. Connelly: As far as this case, for the purposes of this case, *there was no charge about dominion and control over anything as far as this defendant was concerned except that purse.*

"The Court: I understand that. But I would think that the purse would be maybe one thing that you could not say that the husband, on the other hand, had control of. I take it my purse — that isn't even necessarily true, but *I like to think that I have control over my purse.* But other things in the house, it seems to me, my wife and I both have control, possession in the legal sense with respect to.

"I was just pondering that as I thought about the case. I was wondering if you could give me a quick answer as to what the law is.

"Mr. Connelly: I don't have a quick answer, and I am limiting my argument to the specific facts because *we did not charge her with control or custody of anything other than her own purse.*

"The Court: I understand." (R. 185-191) (Our emphasis).

Ultimately, the Court made a clear finding the purse was the petitioner's personal effect:

"The Court: All right, fine.

"Well, I come now, then, to an analysis of the evidence as I see it, and judgment based on that analysis.

"I think there is no dispute that the purse in question was the property of the defendant. I think there is no dispute that she had it in your possession over an extended period of time from the time she was in the automobile to the time that she laid it on the bed in the second floor master bedroom of the residence which she and her husband occupied.

"I think there is no dispute that substantially *all of the contents of that purse* as they now exist *are her personal property, were her personal property at the time that the purse was examined* by Agent Pringle." (R. 245-246) (Our emphasis).

It should also be noted that the personal nature and individuality of the purse was recognized by the searching agents, who were searching for "money" under the authority of the warrant, and seized every dollar on the premises in execution of the warrant but returned to the petitioner the $530.00 found in her purse.

Of the alternative argument, that the purse constituted the petitioner's "effect", the Court of Appeals said nothing.

REASONS FOR GRANTING THE WRIT

This Court should issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit for the following reasons:

1. The allowing of the search of property under the recognized control and in the custody of a person, who is not even suspected of crime, on the basis that she and her property are within a house for which a warrant to search has issued is a serious inroad upon the Fourth Amendment. The question of whether such a custodian is divested of the sanctity and individuality of her own person and own effects by virtue of the search warrant presents an important question of Constitutional Law which has not been, but should be, decided by this Court.

2. The decision in this case is in conflict with applicable decisions of this Court, particularly *United States* v. *DiRe*, 332 U.S. 581.

I.

The important question of federal law which should be settled by this Court is: Is a woman's purse which she is currently wearing or using such an extension of her person as is protected from unreasonable search in the execution of a search warrant for premises. That is the immediate aspect, but it has much larger connotation. Stated more broadly, does a person who enters onto premises being searched, possessed of individual personal belongings and effects, do so, even unknowingly, at the hazard that his privacy, that on the street or door-stoop is impregnable, will vanish?

Further, the purpose of the warrant is defeated. It issued to search for property, for which there was "reasonable cause" to believe was *on* the premises. The warrant does not issue for what might later come onto the premises.

This Court has held that the Fourth Amendment and legislation regulating searches and seizures should be liberally construed in the individual's favor, to prevent impairment of the protection extended by the Constitutional Amendment.

The opinion of the Court of Appeals in effect holds that while a woman's purse may be an extension of her person, it becomes something else when set down. "Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant which the federal agents held and were enforcing."

Yet the trial court had recognized that "all of the contents of that purse as they now exist are her personal property, were her personal property at the time that the purse was examined by Agent Pringel."

So the logical extension of the Court of Appeals' reasoning is that armed with a search warrant for premises only, the agents could search all purses, briefcases, luggage, etc. if the person in the premises in coming into the premises is unfortunate enough to set the item down. That Court's opinion holds that the purse was personal only so long as she held it, contrary to the theory of prosecution (see *infra,* 10-11 where it is clear that dominion over all other "household effects" were attributed to Sheldon Teller).

The difference between a search of the person and a search of a purse or other containers of personal effects which the person is carrying is difficult, if not impossible, to see, since the Constitutional Amendment (IV) articulates

"effects" with the same dignity as "persons". The United States District Court for the Southern District of California recognized that "The protection of this Amendment extends to the 'effects' as well as to the persons and houses of the people." *United States* v. *Hortze,* 179 F.Supp. 913, 917. Also see *United States* v. *Peizner,* 4 Cir., 311 F.2d 94, 101 and *United States* v. *Maroney,* 3 Cir., 339 F.2d 910, 914.

Your petitioner respectfully suggests that this case presents a novel and important question in the law of search and seizure and calls for a defining of the privacy protected and should be decided by this Court.

II.

The decision of the Court below that "Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant . . . " (A. 6), clearly recognizing the ownership of the petitioner, at the same time ignores, what this Court has called "the shift in emphasis from property to privacy"[3] in enforcing the Fourth Amendment.

If the privacy of a personal effect can be destroyed by entry on premises being searched, as the 7th Circuit has held, it is only a logical extension that the privacy of a person is equally destroyed. "By a parity of reasoning with that on which the Government disclaims the right to search occupants of a house . . . ",[4] we must assume equal disclaimer of an occupant's personal effects.

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[3] *Warden* v. *Hayden,* 387 U.S. 294.

[4] *United States* v. *DiRe,* 332 U.S. 581.

We respectfully submit that the reasoning of this Court in *United States* v. *DiRe,* 332 U.S. 581 is applicable here, that the right of privacy has been equally breached without warrant or reasonable cause, and that the decision of the United States Court of Appeals for the Seventh Circuit is violative of the Fourth Amendment, as its protection has been interpreted by this Court.

CONCLUSION

Wherefore, for the above and foregoing reasons, it is respectfully submitted, that this Court should issue its Writ of Certiorari to the Seventh Circuit Court of Appeals to review the decision herein.

Respectfully submitted,

ANNA R. LAVIN
EDWARD J. CALIHAN, JR.
Attorneys for Petitioner

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 16065 SEPTEMBER TERM, 1967 APRIL SESSION, 1968

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
LEAH JOYCE TELLER,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

June 25, 1968

Before SCHNACKENBERG, FAIRCHILD and CUMMINGS, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Leah Joyce Teller, defendant, has appealed from a judgment of the district court, sitting without a jury, convicting her on the first count of an indictment charging that she did on July 23, 1966, purchase, sell, dispense and distribute 4.200 grams of heroin, in violation of Title 26, United States Code, § 4704 (a).[1]

[1] The second and third counts were dismissed on motion of the government.

A motion was made by defendant to suppress evidence and to return property on the ground that the search and seizure were unreasonable, not authorized by a warrant or search warrant, and that the property was not subject to search and seizure, all in violation of the fourth amendment to the federal constitution. The property was described as a purse and alleged narcotics. An answer to the motion was filed alleging the existence on July 23, 1966 of a search warrant for the premises at 9736 South Longwood Drive, Chicago, Illinois, and an arrest warrant for the person of Sheldon R. Teller, husband of defendant, and that the purse and its contents were seized on said premises, and that, therefore, the search and seizure were valid.

A hearing was had on the motion and the answer thereto. The motion was denied.

Defendant is the wife of Sheldon Teller, with whom she was living with their children on July 23, 1966, when a warrant was issued for his arrest and a search warrant was issued for his dwelling and garage at said address, based on an affidavit of a government agent that he had reason to believe that on the premises known as the dwelling and garage at said address there was concealed

> " * * * certain property, namely money which is the fruit of a crime to wit, a violation of Title 21, Sec. 174 U.S. Code.
>
> "And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: Information from Samuel Washington, that he paid Sheldon R. Teller, occupant of said premises, $3,000 for narcotic drugs July 21, 1966. C. L. Jackson, nar. agt., informed complainant he saw the delivery of the narcotics. Complainant furnished Washington with the money. According to Agts. Rendina and Hughes they observed said Teller in possession of narcotic paraphernalia on May 4, 1966."

Said premises were entered by virtue of said search warrant and a search thereof was made. At that time the federal agents first saw defendant behind the driver's seat of her Cadillac car, parked in the driveway of the house. After her husband's arrest, she came into the home. She was carrying a navy blue handbag. The officers and agents immediately commenced their search. Both Teller and defendant, as well as their children, were present.

Agent Pringle, together with another agent and a police officer, upon entering the home went immediately to the main bedroom, taking Teller with him, and began to search. Defendant was then in the living room with one of the children.

Later defendant came into the bedroom and walked over and kissed her husband. She left the room on at least one occasion, and came back. She says she was in and out of the bedroom three or four times.

On her first trip to the room, she put a handbag on the corner of the foot of the bed. Search of the room pursuant to the warrant was then in progress. After about twenty minutes Agent Pringle picked up the purse. He inspected it and found several compartments inside with various feminine articles, and two vials containing powders indicating the presence of an opium derivative. He also found car keys and household keys, a pair of women's silk hose, cosmetics, combs, and certain articles that would "normally" be found in a woman's purse, and $530.

He thereupon arrested defendant and warned her about her right to counsel and that any statements she made could be used against her in a court of law. Pringle asked her if the purse belonged to her and she said that it did. He asked her if the $530 belonged to her and she replied

in the affirmative and that her husband Sheldon had given it to her to go shopping. He then asked her if the two plastic vials containing the white powder belonged to her, and she said that her husband told her not to answer any questions, that her husband would get their attorney.

1. Arguing that a woman's purse occupies a peculiar status and that this court should take judicial notice of the supreme privacy that a woman attaches to her pocketbook, defendant's counsel says that a purse is an extension of the person, its form being only a matter of expediency, custom and style development over the centuries. While we might, for the sake of argument, agree with that statement, we must then consider the next statement of counsel, *viz.:*

> " * * * But the fact is that a purse, any purse, must be put down. It cannot be constantly carried. And the fact that it must be put down does not make it a part of the household wares, subject to general exploration. * * * "

The fallacy of this argument is that, while it recognizes that the use of a practical means of carrying articles with her is employed when a woman carries a purse, which is undoubtedly selected to harmonize with her costume and personal appearance generally, those incidental effects result only when she is *carrying* a purse in harmony with the color context of her clothing and general appearance, *i.e.* when she is "wearing" a purse. The same reasoning would apply to any of her garments. On the other hand, it is obvious that, when defendant placed the purse upon the bed and left the room, she was not continuing to "wear" it as an "extension of her person". For the time being at least the purse was then no more a part of her person than would have been a dress which she had worn into the room and then removed for deposit in a

clothes closet. We conclude that it would be contrary to the facts to hold that a search of a purse lying upon a bed, where it was placed by its owner, constitutes a search of the *person* of that owner, who had placed it there and then left the room.

Defendant testified in answering questions by the court, as follows:

> The Court: When you put the purse on the bed, was it open or closed?
>
> The Witness: It was open.
>
> The Court: And it was open when Agent Pringle showed it to you?
>
> The Witness: Yes.

The record shows that the open purse remained on the bed for twenty minutes before its contents were searched by federal agents pursuant to the search warrant which they held for the premises. Although defendant visited the bedroom four times while the search was in progress, she failed to pick it up prior to the time it was searched.

In this court it is the contention of her counsel that her rights under the fourth amendment were thus violated. However, we agree with the government's argument that, where entry upon the premises was authorized, nothing in the fourth amendment inhibits the seizure by law enforcement agents of contraband, the possession of which is a crime.

In *Harris* v. *United States*, 331 U.S. 145, 154-155 (1947), where the object of a search was certain stolen checks, the agents discovered an envelope in a dresser drawer marked "Personal Papers" which contained several draft cards, the possession of which was in violation of the Selective Training and Service Act. The Supreme Court said, at page 154:

"Clearly the checks and other means and instrumentalities of the crimes charged in the warrant toward which the search was directed as well as the draft cards which were in fact seized fall within that class of objects properly subject to seizure. Certainly this is not a case of search for or seizure of an individual's private papers, ...

" * * * In keeping the draft cards in his custody petitioner was guilty of a serious and continuing offense against the laws of the United States. A crime was thus being committed in the very presence of the agents conducting the search. Nothing in the decisions of this Court gives support to the suggestion that under such circumstances the law-enforcement officials must impotently stand aside and refrain from seizing such contraband material. If entry upon the premises be authorized and the search which follows be valid, there is nothing in the Fourth Amendment which inhibits the seizure by law-enforcement agents of government property the possession of which is a crime, even though the officers are not aware that such property is on the premises when the search is initiated."

Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant which the federal agents held and were enforcing. See *Walker* v. *United States,* D.C. Cir., 327 F.2d 597 (1963), cert. denied 377 U.S. 956. The search of the purse was made pursuant to a search warrant for the premises and not as an incident to the defendant's arrest.

On the hearing of defendant's motion for the return of property and to suppress the evidence, the district court found that the search of defendant's purse "was not made after she had been arrested unlawfully, and therefore was not tainted." It held the search was lawful. This holding is correct.

It is not our duty to set aside a trial court's finding of facts, when supported by credible evidence, and that credibility is to be determined by the trial court. *United States* v. *Ziemer,* 7 Cir., 291 F.2d 100, 102 (1961), cert. den. 368 U.S. 877; *United States* v. *Garelli,* 7 Cir., 333 F.2d 649, 650 (1964), cert. den. 380 U.S. 917; *United States* v. *Caro,* 7 Cir., 350 F.2d 862, 863 (1965).

The record shows that defendant asked the agents if she was under arrest and she got a negative reply, they assuring her that she had complete freedom of the house and movement. While her counsel in this court argue that defendant was in fact under arrest when the search of "her effects was executed", and the arrest was illegal, that contention is erroneous. In fact the agents evidently were never interested in defendant, but were concerned with the arrest of Teller and the discovery of money hidden by him. Defendant was never questioned until the agents found her purse. She used the telephone to call an attorney and a bondsman. She did not testify that she tried to leave the house or that she was prevented from doing so by the agents. As the district court commented, "they had no interest in her".

Finally, we hold that the affidavit and search warrant were based upon probable cause and sufficiently described the premises to be searched and the property to be seized.

For the foregoing reasons the judgment of the district court from which this appeal was taken is affirmed.

JUDGMENT AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

Tuesday, June 25, 1968

Before

HON. ELMER J. SCHNACKENBERG, *Circuit Judge*
HON. THOMAS E. FAIRCHILD, *Circuit Judge*
HON. WALTER J. CUMMINGS, *Circuit Judge*

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. LEAH JOYCE TELLER, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 16065

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Monday, August 5, 1968

Before

HON. ELMER J. SCHNACKENBERG, *Circuit Judge*
HON. THOMAS E. FAIRCHILD, *Circuit Judge*
HON. WALTER J. CUMMINGS, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 16065 vs.
LEAH JOYCE TELLER,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for rehearing filed in the above entitled cause be and the same is hereby denied.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typed pages contain a true copy of

The opinion filed June 25, 1968.

The judgment order entered June 25, 1968.

The order denying the petition for rehearing entered August 5, 1968.

Cause No. 16065

United States of America, Plaintiff-Appellee

vs.

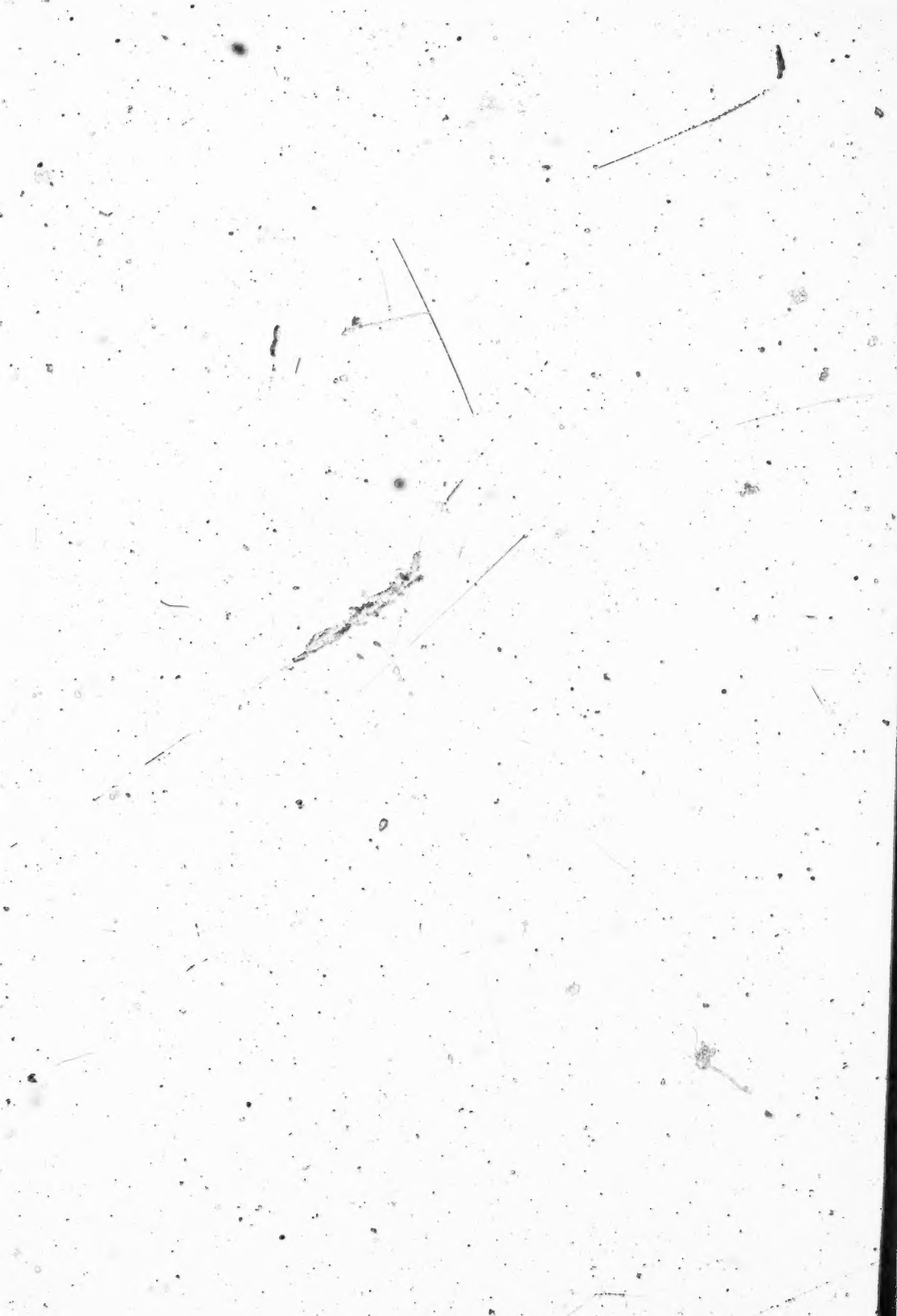
Leah Joyce Teller, Defendant-Appellant

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 10th day of August A.D. 1968.

Kenneth J. Carrick
Clerk of the United States Court of Appeals for the Seventh Circuit.
By *John M. Fanniny*
Deputy

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No. 458

In the Supreme Court of the United States

OCTOBER TERM, 1966

LEAH JOYCE TELLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
Assistant Attorney General,

JEROME M. FEIT,
EDWARD FERRO,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 458

LEAH JOYCE TELLER, PETITIONER

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted after a trial in the United States District Court for the Northern District of Illinois on three counts charging violations of the federal narcotics laws. On November 22, 1966, she was sentenced to five years' imprisonment on count 1, which charged a violation of 26 U.S.C. 4704(a). The court granted a new trial as to the other counts and subsequently dismissed them on motion of the government (V. R. 4–5).[1] The court of appeals affirmed (Pet. App. A).

[1] The record on file with this Court is in six volumes. The hearing on the motion to suppress is in Volume II. The trial

The evidence at a pre-trial suppression hearing and at trial showed that on July 23, 1966, narcotics agents obtained an arrest warrant for petitioner's husband and a warrant authorizing a search of the home he shared with petitioner and their children (III R. 5). The search warrant directed the seizure of $3,000 in government funds, the fruits of a prior narcotics transaction engaged in by petitioner's husband, which there was probable cause to believe was concealed on the premises (II R. 53–54; Pet. 5).

Mr. Teller was arrested in front of his house just as petitioner and their children were about to depart in an automobile (II R. 11). After Mr. Teller was taken inside the house, petitioner and the children voluntarily followed (II R. 150). Petitioner was told that she was not under arrest, that she could go anywhere in the house, but that she was not to interfere with the search (II R. 32, 75; III R. 103). The search of the house commenced in the master bedroom (III R. 29). Petitioner went into the bedroom, embraced her husband, and placed her open purse on the bed (III R. 31, 35; II R. 94). Petitioner thereafter entered the bedroom three or four times, but did not seek to remove the purse (II R. 22; III R. 32, 137–142).

During the search of the bedroom, an agent picked up the open purse about twenty minutes after petitioner had placed it on the bed (II R. 95; III R. 173). The purse was found to contain, *inter alia*, $530 in

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on the merits is recorded in Volume III. A portion of the separate trial of petitioner's husband is recorded in Volume IV. Volume V deals with the sentencing of petitioner.

cash and two vials of narcotics (III R. 9–10, 51, 106, 118). Petitioner, who was then present in the bedroom, was told that she was under arrest for violating the narcotics laws (III R. 7, 11, 29, 71). After being warned of her constitutional rights, she acknowledged that the purse was hers and that the $530 had been given to her by her husband, but she declined to answer questions concerning the ownership of the vials (III R. 12, 52).

At the suppression hearing, petitioner argued that she had been unlawfully arrested outside the house by the agents, that she had then been ordered into the house, and that the search of her purse was the fruit of the illegal arrest (II R. 56–60). The district court found, however, that petitioner had voluntarily returned to the house, and that the search of the purse, which, according to her own testimony, was open when she placed it on the bed, was within the authority conferred by the valid search warrant (II R. 150–154).

1. Petitioner contends that since the agents could not have lawfully searched her purse if she had retained it in her personal possession and control, they obtained no greater authority because she voluntarily placed the open purse on the bed while the agents were engaged in a lawful search of the house. The premise upon which this argument rests—that the agents could not have searched the purse had petitioner retained it in her personal possession—is of doubtful validity in the circumstances of this case. Petitioner was not merely a guest in the premises. Cf. *United States* v. *Di Re,* 332 U.S. 581, 586–587.

On the contrary, petitioner was a joint occupant with her husband of the premises being lawfully searched. In view of that relationship and the subject of the warrant, it would not have been unreasonable for the agents to believe that her husband might have given petitioner some of the government funds before the agents arrived and that she was carrying that money in her purse when she voluntarily reentered the house. In short, the agents would have been justified in searching her purse—whether she placed it on the bed or not—to prevent any attempt to defeat the purpose of the warrant. See *Walker* v. *United States*, 327 F. 2d 597, 599–600 (C.A.D.C.), certiorari denied, 377 U.S. 956.

In all events, even if petitioner correctly assumes that the purse would have been immune from search if she had retained it in her immediate possession, the fact is that she exposed the open purse to official examination by her own voluntary conduct. The agents knew that petitioner resided with her husband, and it was apparent that the purse was the type of a receptacle that could have contained the government funds obtained in the illegal narcotics transaction. When the open purse was placed on the bed by petitioner during the course of the search, it was reasonable for the agents to treat it as part of the household effects properly subject to the search. As the court of appeals concluded, an open purse lying on the bed, like an item of clothing which petitioner had removed and placed in the closet, "was merely another household item subject to the lawful execution of the search warrant which the federal agents held

and were enforcing" (Pet. App. A. 4, 6). See *Walker* v. *United States, supra,* 327 F. 2d at 599–600; *United States* v. *Pasha,* 332 F. 2d 193, 196 (C.A. 7), certiorari denied, 379 U.S. 839. As this Court recently pointed out, "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection". *Katz* v. *United States,* 389 U.S. 347, 351. Since the agents did not exceed their authority under the warrant, they were justified in seizing the contraband narcotics, even though the narcotics were not the subject of the warrant. *Harris* v. *United States,* 331 U.S. 145, 154–155.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
JEROME M. FEIT,
EDWARD FENIG,
Attorneys.

SEPTEMBER 1968.

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